Chapter 1: Introduction to Vehicle Code §625 and §904

CHAPTER 1

This chapter provides an overview of the material addressed in Part I of this volume of the *Traffic Benchbook*. It also describes recent legislation directed at those who commit repeated violations of §625 and §904 of the Motor Vehicle Code and introduces certain terminology that is particularly important in criminal cases involving violations of MCL 257.625 and 257.904.

1.1 Scope Note

Volume 3, Part I of the *Traffic Benchbook* addresses §625 and §904 of the Motor Vehicle Code,* which set forth the criminal sanctions for various offenses involving driving under the influence of alcohol or drugs and driving with a suspended or revoked license. Volume 3, Part I contains five chapters. These chapters contain:

*MCL 257.625 and MCL 257.904.

- Definitions for terms that occur throughout the Vehicle Code's provisions regarding drunk or unlicensed driving (Chapter 1);
- Information about procedural matters that are unique to §625 and §904 offenses (Chapter 2);
- A list of the elements of and sanctions for each §625 and §904 offense (Chapters 3 and 4); and
- Information about penalties for violation of vehicle sanctions that may be imposed upon persons who violate §625 and §904 of the Vehicle Code (Chapter 5).

The discussion in this benchbook assumes that the offender is an adult. For information about traffic offenses involving minors, see the companion volume to the *Traffic Benchbook*—Miller, *Juvenile Traffic Benchbook—Revised Edition* (MJI, 2005).

Offenses involving vehicles other than private automobiles are beyond the scope of the chapters in this part. For information about offenses involving snowmobiles, watercraft, and ORVs, see Volume 2 of the *Traffic Benchbook*. Although a few isolated sections of the benchbook contain limited information regarding drivers of commercial motor vehicles, the *Traffic Benchbook* does not offer any detailed discussion of offenses involving commercial motor vehicles.

Finally, the chapters in this part only contain information about the offenses set forth in §625 and §904 of the Vehicle Code, along with certain related offenses involving chemical tests for bodily alcohol content, and vehicle sanctions imposed as part of a sentence for a §625 or §904 offense. Drunk driving offenses appearing in other Michigan statutes are discussed elsewhere in the *Traffic Benchbook*. See, e.g., the following sections:

- Drunk driving causing injury to a pregnant woman and resulting in miscarriage, stillbirth, death, or serious injury under MCL 750.90d - Volume 3, Section 8.2.
- Felonious driving under MCL 257.626c - Volume 3, Section 7.10.

For information about drug-related offenses arising under the Controlled Substances Act, MCL 333.7101 et seq., see *Managing a Trial Under the Controlled Substances Act* (MJI, 1995). A discussion of licensing sanctions imposed for violations of the Act appears at Section 15.8 of that benchbook.

1.2 Highlights of Recent Legislation

*See 1998 PA 340-359 and 1999 PA 21, 51–59, 73–77.

2003 PA 61 and 2003 PA 134 became effective on September 30, 2003. Both acts include amendments to the Vehicle Code intended to increase the criminal penalties and other sanctions imposed for violations of §625 and §904. Notwithstanding the significant changes made by this pair of public acts, the new laws preserve the substantive content of changes made by legislation in 1998 and 1999* aimed at providing a deterrent to potential repeat offenders with its system of progressive punishment.

The rest of this section summarizes the major changes in §625 and §904 law effected by the recent legislation.

A. New Offenses Added in 1998/99

*§625 offenses in existence at the time Public Acts 61 and 134 were enacted are discussed in detail in Chapter 3. §904 offenses in existence then are discussed in Chapter 4.

The following offenses were established by the 1998/99 legislation:*

- Child endangerment—MCL 257.625(7).
- Permitting a person under the influence of alcohol or drugs to operate a motor vehicle, causing death or serious impairment of a body function—MCL 257.625(2).
- Allowing a person to operate a vehicle with a suspended or revoked license, causing death or serious impairment of a body function—MCL 257.904(7).
- Driving with a suspended or revoked license, causing death or serious impairment of a body function—MCL 257.904(4)–(5).

The following provisions penalize violations of sentence conditions imposed on drunk or unlicensed drivers:

- Violations of court orders for vehicle immobilization under MCL 257.904e(2)–(4).
- Ignition interlock violations under MCL 257.625*l*(2)–(3).
- Transfers to avoid vehicle forfeiture under MCL 257.233(3)–(4).

B. Attempted Vehicle Code Violations Are to Be Treated as Completed Offenses

Beginning in 1999, attempted traffic offenses were treated as completed offenses for purposes of imposing criminal penalties, licensing sanctions, or vehicle sanctions under the Vehicle Code. MCL 257.204b provides:

> "(1) When assessing points, taking licensing or registration actions, or imposing other sanctions under this act for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.
>
> "(2) The court shall impose a criminal penalty for a conviction of an attempted violation of this act or a local ordinance substantially corresponding to a provision of this act in the same manner as if the offense had been completed."

See Section 7.1 of this volume for more discussion of this statute.

C. New §625 Offense Added by 2003 Legislation

The 2003 legislation added one offense to the violations listed in §625: MCL 257.625(8) prohibits the operation of a motor vehicle by a person with any amount of a specified controlled substance in his or her body. Operating with any presence of drugs (OWPD) is similar to the "zero tolerance" offense involving a minor's consumption of alcohol. Section 3.8 of this volume includes a detailed discussion of the elements of an OWPD violation and its consequent criminal penalties and other sanctions.

D. Tracking Misdemeanor Offenders

The 1998/99 legislation increased the term of imprisonment for certain misdemeanor offenses from 90 to 93 days, a difference in sentence length that

makes it more likely that a person's prior criminal history will appear in state police records. This is critical to providing courts with adequate information for the purpose of sentencing repeat offenders.

Increasing misdemeanor penalties to 93 days makes state police records more complete because the 93-day penalty triggers the fingerprinting requirements of MCL 28.243. Under this statute, local law enforcement authorities must send two sets of fingerprints to the state police as follows:

- Within 72 hours after the arrest of a person for a felony or a misdemeanor for which the maximum penalty exceeds 92 days' imprisonment and/or a fine of $1,000.00. MCL 28.243(1).
- Within 72 hours after entry of a conviction for a misdemeanor for which the maximum penalty is 93 days' imprisonment or a violation of a local ordinance that substantially corresponds to a violation of state law for which the maximum penalty is 93 days' imprisonment. MCL 28.243(2). A person's fingerprints are not required to be taken and forwarded to the state police for a violation of MCL 257.904(3)(a) (DWLS—first offense), or a local ordinance substantially corresponding to MCL 257.904(3)(a). MCL 28.243(3).

An arresting law enforcement agency has the discretion to take the fingerprints of persons arrested for other misdemeanors. MCL 28.243(5). For traffic offenses, however, MCL 28.243(13) prohibits authorities from sending the state police the fingerprints of persons accused and convicted under the Vehicle Code or a local ordinance substantially corresponding to the Vehicle Code unless the offense is punishable by more than 92 days' imprisonment or is an offense punishable by more than 92 days' imprisonment upon a subsequent conviction.

Townships, cities, villages, and other municipalities are authorized to adopt ordinances with 93-day terms of imprisonment in cases where the ordinance would substantially correspond to a state statute that also imposes a maximum term of imprisonment of 93 days. See, e.g., MCL 41.183(5), 117.4i(k). 93-day penalties will trigger the fingerprinting requirements of MCL 28.243, facilitating the compilation of a criminal history in the event that a misdemeanor defendant later commits another offense.

E. Tougher Criminal Penalties and Licensing Sanctions for Repeat Offenders

In addition to increasing many misdemeanor penalties to 93 days, the 1998/99 legislation enhanced criminal penalties and licensing sanctions for repeat offenders of §625 or §904.

In general, any combination of any two §625 offenses within seven years will result in enhanced criminal penalties and driver's license revocation. Any combination of three §625 convictions within ten years will result in felony penalties and license revocation for a longer period of time.* With respect to §904 offenses, the 1998 legislation generally provides for increasing criminal penalties and periods of license suspension or revocation where the offender has multiple §904 suspension violations within seven years.

*Only one "zero tolerance" violation under §625(6) may be counted as a prior conviction and no §625(2) violations may be counted as prior convictions.

Note: Vehicle Code §625 and §904 offenses are not interchangeable in determining whether a person has prior convictions for purposes of enhancing criminal penalties or periods of license suspension.

F. Discretionary Vehicle Forfeiture

Vehicle forfeiture pursuant to §625n* may be imposed at the court's discretion for various offenses under §625 and §904 of the Vehicle Code. An offender's vehicle is subject to forfeiture for the following violations:

*MCL 257.625n has not yet been amended to reflect the changes made by 2003 PA 61 to section 625 of the Vehicle Code.

- OWI under §625(1) or (8), occurring within seven years of one prior conviction or within ten years of two or more prior convictions. MCL 257.625(9)(e), (f).
- OWVI under §625(3), occurring within seven years of one prior conviction or within ten years of two or more prior convictions. MCL 257.625(11)(e), (f).
- OWI or OWVI causing death or serious impairment of a body function under §625(4)–(5). MCL 257.625(4)(a), (5).
- Child endangerment under §625(7). MCL 257.625(7)(c).
- DWLS causing death or serious impairment of a body function under §904(4)–(5). MCL 257.904(6).

G. Vehicle Immobilization

MCL 257.904e(1) authorizes courts to order vehicle immobilization "by the use of any available technology approved by the court that locks the ignition, wheels, or steering of the vehicle or otherwise prevents any person from operating the vehicle or that prevents the defendant from operating the vehicle." Depending upon the offense (or number of offenses), vehicle immobilization may be mandatory or discretionary.

Mandatory Immobilization — MCL 257.904d(1)–(2) require vehicle immobilization upon conviction of the following violations of §625 and §904:

- Any violation of §904(4) or (5) (DWLS causing death or serious impairment of a body function).

- A moving violation committed while driving with a suspended/ revoked license and occurring within seven years of two or more prior suspensions, revocations, or denials imposed under §904(10), (11), or (12) (moving violations committed while driving with a suspended or revoked license) or former section 904(2) or (4).

- Any violation of §625(4) or (5) (OWI or OWVI causing death or serious impairment of a body function).

- A violation of §625(1), (3), (7), or (8) (OWI or OWVI or child endangerment) within seven years after one prior conviction or within ten years after two or more prior convictions of any of the following offenses under a Michigan law, or under a substantially corresponding local ordinance or law of another state:

– OWI under §625(1).

– OWVI under §625(3).

– OWI or OWVI causing death or serious impairment of a body function under §625(4)–(5).

– Zero tolerance violations under §625(6); however, only one such conviction may count as a prior conviction for purposes of immobilization.

– Child endangerment under §625(7).

– OWPD under §625(8).

– Operating a commercial motor vehicle with an unlawful bodily alcohol content, under §625m.

– Former §625b (formerly provided penalties for OWVI).

– A violation of any prior enactment of §625, including former subsections (1) and (2), which penalized operating while intoxicated or with an unlawful blood-alcohol content, respectively.

– Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

Note: "Prior conviction does not include a previous conviction for §625(2) (permitting another to operate a vehicle while intoxicated). MCL 257.904d(8)(a)(*i*)(A). If two prior convictions arise from a single incident, only one of those convictions may be counted as a prior conviction. MCL 257.904d(9).

Discretionary Immobilization — The court has discretion to order immobilization upon conviction of the following offenses:

- First offenses under §625(1), (3), (7), or (8) or a local ordinance substantially corresponding to §625(1) or (3). MCL 247.904d(1)(a).

- A moving violation committed while driving with a suspended/ revoked license within seven years of a prior suspension, revocation, or denial imposed under §904(10), (11), or (12) or former section 904(2) or (4). MCL 247.904d(2)(a).

H. Registration Plate Confiscation

MCL 257.904c requires police to immediately confiscate and destroy the vehicle registration plates of drivers who are detained for offenses for which vehicle immobilization is required. These drivers are issued a temporary vehicle registration plate, which is valid until the charges against the driver are dismissed, the driver pleads guilty or nolo contendere to the charges, or the charges are adjudicated.

See the above discussion for a list of offenses requiring vehicle immobilization.

I. Registration Denial

The Secretary of State shall refuse issuance of a certificate of title, a registration, or a transfer of registration for a vehicle if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for one of the following offenses:

- A third or subsequent violation of §625 or §625m* or a local ordinance substantially corresponding to these sections.

- A fourth or subsequent suspension or revocation of a driver's license under §904.

MCL 257.219(1)(d).

*Section 625m concerns operating a commercial motor vehicle with an unlawful bodily alcohol content. A detailed discussion of commercial vehicle offenses is beyond the scope of this benchbook.

J. Authority to Order Licensing Sanctions Consolidated in Secretary of State

Prior to October 1, 1999, courts and the Secretary of State had statutory authority to order licensing sanctions for certain offenses, including OWI and OWI/OWVI causing death or serious injury. For arrests after October 1, 1999, the authority to impose licensing sanctions has been consolidated in the Secretary of State in *all* cases, *except* for:

- Drug suspensions ordered under the Public Health Code, MCL 333.7408a; or,

- No proof of insurance convictions, MCL 257.328.

On licensing sanctions imposed by the Secretary of State, see, e.g., MCL 257.319(8) and MCL 257.303(5).

1.3 Definitions Commonly Used in §625 and §904 of the Vehicle Code

A. "Controlled Substance"

*For more complete discussion of "controlled substances," see *Managing a Trial Under the Controlled Substances Act*, Section 1.6 (MJI, 1995).

"Controlled substance" for purposes of the Motor Vehicle Code means "a controlled substance or controlled substance analogue as defined in [MCL 333.7104, the Controlled Substances Act]." MCL 257.8b. The Michigan Board of Pharmacy classifies drugs as "controlled substances" under the Controlled Substances Act according to five schedules set forth in MCL 333.7211–333.7220. These schedules contain many substances that have a potential for or history of abuse, including narcotics (e.g., heroin, morphine, methadone), hallucinogenic drugs (e.g., LSD, marijuana, mescaline, peyote), and cocaine.*

B. "Conviction"

*See also "prior conviction" below.

MCL 257.8a(a) defines "conviction" as "a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation...."*

*Former MCL 257.625(6). Current §625(9) contains a similar provision.

In *People v Vezina*, 217 Mich App 148, 151 (1996), the Court of Appeals distinguished a "violation" of the OWI statute from a "conviction" for purposes of enhancing the penalties for a repeat offender. At the time at issue in this case, the OWI statute* provided for enhanced penalties where the "violation" in question occurred within seven years of a prior OWI "conviction." Rejecting the defendant's argument that the word "violation" in the statute is synonymous with "conviction," the Court held that a "violation" occurs when the unlawful act takes place. Thus, OWI penalties for a violation must be enhanced if the defendant's wrongful act occurred within seven years of a prior conviction.

C. "Generally Accessible" to Motor Vehicles

*MCL 257.625(1).

In a case involving the OWI statute,* the Court of Appeals noted that "a place where vehicles are routinely permitted to enter for the purpose of driving and parking" is "generally accessible to motor vehicles." *People v Nickerson*, 227 Mich App 434, 440 (1998). In *Nickerson*, such a place included the pit area of a motor speedway where spectators could park upon payment of an admission fee. The Court in *Nickerson* further found that the statutory phrases "open to the general public" and "generally accessible to motor vehicles" in the OWI statute specify two distinct alternative places other than highways where driving a vehicle under the influence of intoxicants is prohibited. *Id*.

D. "Ignition Interlock Device"

An ignition interlock device measures alcohol concentration in a driver's breath. It prevents a motor vehicle from being started at any time without first determining the driver's breath alcohol level through a deep lung sample. The system is calibrated so that the vehicle may not be started if the breath alcohol level of the driver measures a level of 0.025 grams per 210 liters of breath. MCL 257.625*l*(6).

See Section 2.10(C) of this volume on procedures for ordering installation of an ignition interlock device, and Section 5.1 of this volume on penalties for circumventing the device.

E. "Motor Vehicle" and "Vehicle"

For purposes of the discussion in this chapter, MCL 257.33 defines "motor vehicle" as follows:

> "'Motor vehicle' means every vehicle that is self-propelled . . . . Motor vehicle does not include an electric patrol vehicle being operated in compliance with the electric patrol vehicle act. Motor vehicle does not include an electric personal assistive mobility device."

MCL 257.79 defines "vehicle" as follows:

> "'Vehicle' means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks . . . ."

Note: This part of Volume 3 of the *Traffic Benchbook* is concerned only with private automobiles. Offenses involving snowmobiles, watercraft, and ORVs are addressed in Volume 2. Commercial motor vehicles are beyond the scope of this benchbook.

F. "Operating" a Vehicle

MCL 257.35a defines "operate" or "operating" as "being in actual physical control of a vehicle regardless of whether or not the person is licensed under [the Vehicle Code] as an operator or chauffeur."

The Michigan Supreme Court considered the meaning of "operating" a vehicle in *People v Wood*, 450 Mich 399 (1995). In *Wood*, police found the defendant unconscious in his van at a restaurant drive-through window. The van's engine was running, the transmission was in drive, and the defendant's

foot was on the brake pedal, which kept the van from moving. The Court held that the defendant was "operating" the vehicle for purposes of the OWI statute, MCL 257.625(1):

> "We conclude that 'operating' should be defined in terms of the danger the OUIL statute seeks to prevent: the collision of a vehicle being operated by a person under the influence of intoxicating liquor with other persons or property. Once a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." 450 Mich at 404–405.*

*In so holding, the Court overruled *People v Pomeroy* (On Rehearing), 419 Mich 441 (1984).

The Court of Appeals has affirmed OWI convictions in cases where there was circumstantial evidence to prove that a defendant was operating a vehicle while under the influence of intoxicants at some time prior to arrest. See *People v Schinella*, 160 Mich App 213, 216 (1987) (defendant found in a car straddling a ditch with the engine turned off, under circumstances indicating attempts to dislodge the vehicle before police arrived), and *People v Smith*, 164 Mich App 767, 770 (1987) (defendant found unconscious in a car on the highway shoulder 1/4 mile from the nearest exit, with the transmission in park and the motor running).

However, in *People v Burton*, 252 Mich App 130 (2002), the defendant was charged with attempted OWI and attempted DWLS. Police officers found defendant asleep behind the wheel of his vehicle. The vehicle's engine was running, but the vehicle was parked in a golf course parking lot with its transmission in "neutral" or "park." Defendant failed a sobriety test and had a blood-alcohol level of 0.17 or 0.18. Defendant admitted to the officers that he had driven across the parking lot. *Id.* at 142–43. The Court of Appeals held that this evidence was insufficient to support a conviction of either charged offense. The Court of Appeals found that the evidence did not establish that defendant possessed the requisite specific intent to operate his vehicle. The Court looked to the definition of "operate" as set forth in *People v Wood,* 450 Mich 399, 404–05 (1995):

> "Once a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk." *Burton, supra* at 143.

The Court in *Burton* concluded that "the evidence did not provide a basis for the jury to properly conclude that defendant's truck was in a position posing a significant risk of causing a collision." *Id.* at 144. In addition, the prosecuting attorney failed to present sufficient evidence that defendant took an action in furtherance of the alleged offenses. *Id.* at 145, 147–48.

See also CJI2d 15.11, 15.12 (OWI/OWVI causing death, serious impairment of a body function), which state that "[o]perating means driving or having actual physical control of the vehicle."

G. "Prior Conviction"

Enhancement of criminal penalties and certain other sanctions for §625 and §904 violations depend upon whether the offender has any "prior convictions." In considering an offender's "prior convictions" for purposes of imposing enhancements, it is important to distinguish between drunk driving and suspended/revoked license violations. Offenses under §625 and §904 are generally not interchangeable in deciding whether a person has a "prior conviction."

1. "Prior Convictions" for §625 Offenses

The Vehicle Code contains two lists of prior convictions that will result in enhanced penalties for repeat offenders who violate §625. One list applies to the following penalties and sanctions:

- Imposition of criminal penalties (jail terms, fines) under MCL 257.625(25);
- Orders for vehicle immobilization under MCL 257.904d(8); and,
- Driver license suspensions under MCL 257.319(19).

The other list applies to license revocation under MCL 257.303(5).

In cases involving §625 offenses, the definition of "prior conviction" is the same for purposes of imposing criminal penalties, vehicle immobilization, and driver's license suspension. "Prior conviction" in these three contexts means a conviction for any of the following violations or attempted violations, whether under a law of the State of Michigan, a local ordinance substantially corresponding to a Michigan law, or a law of another state substantially corresponding to a Michigan law:*

*See below for a definition of "substantially corresponding" laws or local ordinances.

- OWI and OWVI under §625(1), (3), or (8).
- OWI and OWVI causing death under §625(4).
- OWI and OWVI causing serious impairment of a body function under §625(5).
- "Zero tolerance violations" under §625(6).

Note: With the exception of a second §625(6) violation within seven years of a previous §625(6) conviction, only one violation or attempted violation of §625(6) or a corresponding statute or ordinance from another jurisdiction may be counted as a prior conviction for purposes of penalty enhancement in section 625.

Where an offender is convicted of violating §625(6) for a second time within seven years, MCL 257.625(12)(b) allows the use of both convictions for purposes of the penalties listed there. MCL 257.625(26).

- Child endangerment, under §625(7).
- Operating a commercial motor vehicle with an unlawful bodily alcohol content, under §625m.
- Former §625b (provided criminal penalties for OWI).
- A violation of any prior enactment of §625, including former subsections (1) and (2) (which penalized operating while intoxicated and with an unlawful blood-alcohol content, respectively).
- Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

A conviction for violating or attempting to violate MCL 257.625(2) (permitting an intoxicated person to operate a motor vehicle) may not be counted as a "prior conviction" for purposes of penalty enhancement under section 625. MCL 257.625(25)(a)(*i*).

If two or more of the prior convictions arise out of the same transaction, only one conviction may be counted as a prior conviction. MCL 257.625(27).

2. "Prior Convictions" and License Suspension

MCL 257.319(8) contains a detailed list of suspension periods that increase proportionately to the number of "prior convictions" as defined in §319. The list of offenses in §319 is the same as the list applicable to §625 offenses. See MCL 257.319(19).

Note: With the exception of a second §625(6) violation within seven years of a previous §625(6) conviction, only one violation or attempted violation of §625(6) or a corresponding statute or ordinance from another jurisdiction may be counted as a prior conviction for purposes of enhanced license suspension under §319. Where an offender is convicted of violating §625(6) for a second time within seven years, MCL 257.319(8)(d) allows the use of both convictions for purposes of the penalties listed there. MCL 257.319(20).

If two or more of the prior convictions arise out of the same transaction, only one conviction may be counted as a prior conviction. MCL 257.319(21).

3. "Prior Convictions" for Purposes of License Revocation

The prior convictions that must be considered for purposes of license revocation under MCL 257.303(5)(c) and (g) are the same as the prior convictions listed in §319 and §625. MCL 257.303(5)(d) mandates license revocation for any conviction of §904(4) or (5) (DWLS causing death or serious injury). See Section 2.10(B) of this volume for more information about license revocation in drunk driving cases.

4. "Prior Convictions" for §904 Offenses

Enhanced licensing sanctions apply to an offender who unlawfully operates a vehicle or commits a moving violation when his or her driver's license is suspended or revoked. MCL 257.904(10), (11), and (12) mandate the imposition of additional periods of suspension or revocation for repeat offenders. However, an offense occurring during a first-time suspension for failing to appear in court (FAC) or failing to comply with a judgment (FCJ) under MCL 257.321a will not count as a prior offense for purposes of enhancement under §904(10)–(12). This exemption for an FAC/FCJ suspension violation applies only once during a person's lifetime; if there is a subsequent FAC/FCJ suspension violation, both it and the first violation are counted for purposes of enhancement. MCL 257.904(18).

In addition to enhanced licensing sanctions, persons who commit multiple offenses while driving with a suspended/revoked license are also subject to increasing criminal penalties and vehicle sanctions. See, e.g., §904(3) (providing enhanced criminal penalties for repeat DWLS offenders) and §904d(2) (providing periods of vehicle immobilization that increase with the number of multiple offenses within the past seven years).

H. "Serious Impairment of a Body Function"

"Serious impairment of a body function" is used in the following statutes within the Motor Vehicle Code:

- OWI and OWVI causing serious impairment of a body function, under MCL 257.625(5);
- Driving while license suspended or revoked and causing serious impairment of a body function, under MCL 257.904(5); and,
- Allowing another person to drive with license suspended or revoked, where the other person causes serious impairment of a body function, under MCL 257.904(7).

"Serious impairment of a body function" is defined in MCL 257.58c and MCL 257.904(5) for purposes of its use in §904(5) and (7) as including (without limitation) one or more of the following injuries:

- Loss or lost use of a limb.
- Loss or lost use of a foot, hand, finger, or thumb.
- Loss or lost use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasts for more than 3 days.
- Measurable brain or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.

I. "Substantially Corresponding" Ordinance or "Law" of Another "State"

*See also MCL 257.204a (sanctions for attempted violations of Vehicle Code), MCL 257.625 (drunk driving offenses), MCL 257.732a (driver responsibility fee), and MCL 257.904d (vehicle immobilization).

Many Vehicle Code provisions authorize enhancement of penalties for repeat offenders based upon prior convictions under other jurisdictions' statutes or ordinances that "substantially correspond" to Michigan statutes. For example, MCL 257.303(5) authorizes the Secretary of State to revoke a driver's license upon receipt of records of conviction under "a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state."* To fully understand such provisions, the terms "substantially corresponding," "law of another state," and "state" must be defined.

1. "Substantially Corresponding"

In *People v Wolfe,* 251 Mich App 239 (2002), the defendant was charged with felony child endangerment under MCL 257.625(7)(a)(*ii*) based upon a charged violation of MCL 257.625(3) (OWVI) and a 1991 conviction in Texas for driving while intoxicated. The Circuit Court dismissed the felony charge and remanded the case to the District Court for trial, ruling that the Michigan and Texas statutes did not "substantially correspond" to one another. *Wolfe, supra* at 240–41. The prosecuting attorney appealed, and the Court of Appeals reversed and remanded for trial in the Circuit Court. The Texas statute at issue defined "intoxicated" as "not having the normal use of mental faculties" due to consumption of alcohol, a controlled substance, or both, or as having a bodily alcohol content of 0.10 or more as measured by blood, breath, or urine in concentrations identical to those specified in Michigan's statutes. *Wolfe, supra* at 244–45. Looking to the dictionary definitions of "substantial" and "corresponding," the Court of Appeals noted that "substantially corresponding," in this context, referred to similarity in essential aspects. Although using different words, the Michigan and Texas statutes proscribed similar conduct using subjective criteria ("intoxicated" and "visibly impaired"), and both statutes also provided identical blood-

alcohol limits as an objective method of proving a violation. *Id.* at 245–46. Thus, given the ordinary and generally accepted meaning of the phrase, the two states' statutes "substantially corresponded" to one another. The Court of Appeals also noted the trial court's "misplaced" reliance on *Oxendine v Sec'y of State,* 237 Mich App 346 (1999). *Wolfe, supra* at 246.

In *Oxendine,* the petitioner was convicted in 1991 in North Carolina of violating a statute that proscribed driving "[w]hile under the influence of an impairing substance. . . ." *Oxendine, supra* at 351. In 1997, the petitioner was convicted in Michigan of violating MCL 257.625(1), operating a vehicle "under the influence of liquor." The respondent revoked the petitioner's license under MCL 257.303 on the basis of these two convictions. The Court of Appeals found the meaning of "under the influence" in the statutes "far from clear." *Oxendine, supra* at 352. The Court reasoned that because the *law* of another state (and not merely the statute's language) must "substantially correspond" to the Michigan statute at issue, it must examine judicial construction of the Michigan and North Carolina statutes. *Id.* at 352–53. In *People v Lambert,* 395 Mich 296, 305 (1975), the Michigan Supreme Court held that to be convicted of "operating under the influence of liquor," the "defendant's ability to drive [must have been] substantially and materially affected by consumption of intoxicating liquor."* In *State v Harrington,* 336 SE2d 852 (NC App, 1985), the court held that the prosecution does not need to show that the defendant's faculties were "materially impaired" to prove "impaired driving" under the North Carolina statute. Thus, the Michigan Court of Appeals concluded that because the North Carolina statute proscribed a wider range of behavior than Michigan's statute, the two states' statutes did not "substantially correspond" to one another. *Oxendine, supra* at 355–56. The Court also distinguished *Johnson v Sec'y of State,* 224 Mich App 158 (1997), on grounds that the two states' statutes at issue in *Johnson* defined "drunk driving" similarly, and that the "pivotal issue" in *Johnson* was whether a civil infraction could be considered a "conviction" for purposes of MCL 257.303. *Oxendine, supra* at 356 n 7.

*See Section 3.3 for further discussion of *Lambert.*

In *Johnson, supra,* the Court of Appeals considered the meaning of "substantial correspondence" in determining whether a driver convicted under Michigan's OWI statute would be subject to license revocation as a repeat offender based on a previous conviction under a Wisconsin drunk driving statute. The Court noted that the offense of drunk driving was defined in similar terms under both state statutes at issue; however, violation of the Wisconsin statute constituted a civil infraction for which no jail term would be imposed. Nonetheless, the Court found that the Wisconsin statute was "substantially corresponding" to Michigan's OWI statute, and upheld the Secretary of State's decision to revoke the driver's license. Despite the difference in the categorization of the Michigan and Wisconsin offenses, the Court noted that: 1) it is the offense rather than the penalty that must correspond to the Michigan statute; 2) the procedures for adjudicating first offense OWI violations in Michigan and Wisconsin were similar; 3) the driver was afforded procedural protections similar to those in a criminal proceeding;

and 4) like Michigan, Wisconsin provides criminal penalties for second OWI offenses.

See also *Kutzli v Sec'y of State*, 152 Mich App 38, 41 (1986) (Another state's statute substantially corresponds to a Michigan statute where it contains language similar to the Michigan statute or proscribes the same conduct as the Michigan statute; procedures by which a conviction is obtained are not determinative).

2. "Law of Another State"

The Vehicle Code defines the term "law of another state" to mean "a law *or ordinance* enacted by another state or by a local unit of government in another state." MCL 257.24c [Emphasis added]. Under this definition, violations of local ordinances in other states may be considered for purposes of penalty enhancement under repeat offender provisions that encompass offenses committed under the "law of another state."

3. "State"

Under the Vehicle Code, a "state" is "any state, territory, or possession of the United States, Indian country as defined in 18 USC 1151, the District of Columbia, or any province or territory of the Dominion of Canada." MCL 257.65.